Highlands & Lowlands Bhd v Tamil Selvy a/p Periasamy & Ors

HIGH COURT (IPOH) – CIVIL SUIT NO 22-143 OF 2002
ABDULL HAMID EMBONG J
16 SEPTEMBER 2003

Civil Procedure *— Summary judgment — Application for — Whether bona fide issues raised by defendant — Whether plain and obvious case for summary judgment*

Land law *— Tenancy — Tenants at will — Defendants provided quarters whilst in plaintiff's employ — Whether defendants merely tenants at will — Whether defendants had to vacate quarters once employment terminated*

The defendants were former employees of the plaintiff. They were provided residential quarters whilst in the plaintiff's employ. The first to fifth defendants voluntarily stopped work with the plaintiff when its estate switched from rubber to oil palm. The sixth defendant stopped work without notice to the plaintiff. The seventh defendant retired with full benefits. The defendants were all given notices to quit but ignored the notices. The plaintiff applied for summary judgment for ejectment and vacant possession of the quarters. In opposing the application, the defendants averred that the plaintiff had created a legitimate expectation for alternative housing for them. The first to the fifth defendants averred that they were discriminated against by the plaintiff and that their terminations were not legal. They did not however deny that the plaintiff had offered them jobs in the oil palm estate. Counsel for the defendants submitted that an issue that needed further deliberation in a full trial concerned a promise made by the plaintiff that the defendants would be given alternative housing elsewhere. It was further submitted that the defendants were not squatters but tenants holding over and as such they had a right to stay on in the quarters. Counsel for the plaintiff submitted that the defendants only had a contractual right to remain in the quarters for as long as they were employed with the plaintiff. They had no right in law, said counsel, to reside in the quarters forever.

Held, allowing the plaintiff's application with costs and dismissing the defendants' oral application to stay execution of the judgment pending appeal:

(1) In an application for summary judgment it is trite law that the court should only determine whether the defence had raised a bona fide issue for trial. The court need not be concerned with the merits of the defence or the likelihood of its success. The defence should not be deprived of its chance to adduce evidence at a trial if it the court determines that a full trial is necessary. On the facts, the defendants had not raised any bona fide issue to be tried. They

had merely adverted to an alleged promise by the plaintiff's officer some time in the past. That promise was merely to seek the views of the employees and that such discussion even took was denied by the plaintiff. The defendants could not adduce any evidence that the discussion took place but merely alleged it. Bare allegations can never be evidence and must condescend on some particulars. Even if the promise existed, it was insufficient to raise a bona fide issue for trial (see p 544C–D).

(2) In the instant case, the plaintiff was merely trying to secure possession of its property – the quarters. It would cause hardship and injustice to the plaintiff if the court were to accede to the defendants' claim that they were entitled to stay on in the quarters in view of the purported promise given to them. If at all it existed, the promise remained what it was — a promise. It could not be a legal basis for the defendants to claim that they had a legitimate expectation to remain in the plaintiff's quarters at will and indefinitely. The defendants had no such right in law and were not tenants holding over. They were provided the quarters as part of their scheme of employment which had ended and at best - they were merely tenants at will. The plaintiff as the legal owner of the quarters could therefore exercise its will to recover its properties once the employment was terminated (see p 544G–545B).

(3) For the principle of equitable estoppel to apply there had to firstly be a landlord and tenant relationship between the parties, which was non-existent on the facts. Secondly, the defendants would have had to expend money on the quarters as a result of the plaintiff's promise or inducement, which on the facts there was no evidence of. The defendants also failed to show that the elements of assurance, reliance and detriment were present (see p 546B–C).

(4) On the facts, there was no basis for the bare allegation that the defendants were discriminated against in the offers for the alternative employment. The court was satisfied that the defendants were offered new employment which they voluntarily declined. Thus the defendants had not raised any bona fide defence as showing cause to the application. This was a plain and obvious case and the court was entitled to exercise its discretion not to grant leave to defend and to enter summary judgment (see p 546D–G).

[Bahasa Malaysia summary

Defendan-defendan merupakan bekas pekerja plaintif. Mereka telah diberi tempat tinggal semasa bekerja untuk plaintif. Defendan-defendan pertama ke kelima telah berhenti bekerja dengan plaintif secara sukarela apabila ladang plaintif bertukar kepada kelapa sawit daripada getah. Defendan keenam telah berhenti berkerja tanpa

memberi notis kepada plaintif. Defendan ketujuh bersara dengan faedah-faedah penuh. Semua defendan telah diberi notis untuk berhenti tetapi mereka tidak menghiraukannya. Plaintif telah memohon penghakiman terus untuk mengusir dan milikan kosong tempat tinggal itu. Di dalam menentang permohonan itu, defendan-defendan menyatakan bahawa plaintif telah mewujudkan harapan yang sah untuk perumahan alternatif bagi mereka. Defendan-defendan pertama ke kelima telah menyatakan bahawa mereka telah didiskriminasikan oleh plaintif dan penamatan kerja mereka tidak sah. Mereka tidak menafikan bahawa plaintif telah menawarkan pekerjaan kepada mereka di ladang kelapa sawit. Peguam bagi pihak defendan-defendan menghujahkan bahawa satu isu yang perlu dibicarakan di dalam perbicaraan penuh adalah mengenai janji yang dibuat oleh plaintif bahawa defendan-defendan akan diberikan perumahan alternatif di tempat lain. Ia juga dihujahkan bahawa defendan-defendan bukan merupakan setinggan tetapi penyewa-penyewa yang memeganglepas masa selepas tamatnya masa penyewaan dan oleh itu mereka mempunyai hak untuk menduduki tempat tinggal itu. Peguam bagi pihak plaintif menghujahkan bahawa defendan-defendan hanya mempunyai hak kontrak untuk menduduki tempat tinggal itu sekira mereka berkerja untuk plaintif. Mereka tidak mempunyai hak di sisi undang-undang, kata peguam, untuk menduduki tempat tinggal itu selamanya.

Diputuskan, membenarkan permohonan plaintif dengan kos dan menolak permohonan lisan defendan-defendan untuk penggantungan pelaksanaan penghakiman sementara menunggu rayuan:

(1) Di dalam permohonan untuk penghakiman terus ia adalah undang-undang lapuk bahawa mahkamah hanya patut memutuskan sama ada pembelaan telah membangkitkan isu bona fide untuk perbicaraan. Mahkamah tidak perlu menimbangkan merit-merit pembelaan itu atau kemungkinan pembelaan itu akan berjaya. Pihak pembelaan tidak patut disebabkan tidak dapat memberi keterangan di perbicaraan jika mahkamah memutuskan bahawa perbicaraan penuh diperlukan. Pada fakta-fakta, defendan-defendan tidak membangkitkan isu-isu bona fide untuk dibicarakan. Mereka hanya merujuk kepada janji oleh plaintif yang dikatakan pada masa dahulu. Janji itu hanya untuk mendapatkan pandangan–pandangan pekerja-pekerja dan bahawa perbincangan itu telah diadakan telah dinafikan oleh plaintif. Defendan-defendan tidak dapat mengemukakan keterangan untuk menunjukkan bahawa perbicangan itu diadakan tetapi hanya dapat mengatakannya. Pengataan-pengataan sahaja tidak dapat menjadi keterangan dan mesti mempunyai butiran. Jikapun janjian itu wujud, ia tidak mencukupi untuk membangkitkan isu-isu bona fide untuk perbicaraan (lihat ms 544C–D, E–G).

(2) Di dalam kes ini, plaintif hanya cuba mendapatkan milik hartanahnya — tempat tinggal itu. Ia akan menyebabkann kesusahan dan ketidakadilan kepada plaintif jika mahkamah membenarkan permohonan defendan-defendan bahawa meeka berhak tinggal di dalam tempat tinggal itu memandangkan janji yang dikatakan telah diberi kepada mereka. Jika ia wujud, janji itu hanya janji. Ia tidak dapat menjadi alasan di sisi undang-undang untuk defendan-defendan memohon bahawa mereka mempunyai harapan yang sah untuk tinggal di dalam tempat tinggal plaintif sesuka hati dan selamanya. Defendan-defendan tidak mempunyai hak di sisi undang-undang dan bukan merupakan penyewa-penyewa yang memeganglepas masa selepas tamatnya masa penyewaan. Mereka diberi tempat tinggal sebagai sebahagian daripada skema pekerjaan yang telah tamat dan mereka hanya merupakan penyewa-penyewa mengikut kehendak. Plaintif sebagai pemunya di sisi undang-undang tempat tinggal itu berhak mendapat kembali hartanahnya apabila pekerjaan ditamatkan (lihat ms 544G–545B).

(3) Untuk prinsip estopel ekuiti terpakai pertamanya, perlu ada perhubungan tuan tanah dan penyewa di antara parti-parti yang tidak terdapat di dalam fakta-fakta. Keduanya, defendan-defendan perlu telah menggunakan wang ke atas tempat tinggal itu sebagai akibat janji atau dorongan plaintif, yang tiada buktinya di dalam fakta-fakta. Defendan-defendan juga telah gagal menunjukkan elemen-elemen jaminan, pergantungan dan penjejasan (lihat ms 546B–C).

(4) Pada fakta, tiada dasar untuk pengataan bahawa defendan-defendan telah didiskriminasikan di dalam tawaran untuk pekerjaan alternatif. Mahkamah berpuas bahawa defendan-defendan telah ditawarkan pekerjaan baru tetapi telah menolaknya secara sukarela. Oleh itu defendan-defendan tidak membangkitkan pembelaan bona fide yang menunjukkan kausa kepada permohonan. Ini merupakan kes yang jelas dan mahkamah berhak menggunakan budibicaranya untuk tidak memberi kebenaran untuk membela dan untuk memasukkan penghakiman terus (lihat ms 546D–G).]

Notes

For cases on application for summary judgment, see 2 *Mallal's Digest* (4th Ed, 2001 Reisue), paras 5782-5815.

For cases on tenants at will, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue), para 3962.

Cases referred to:

Anglo-Oriental Plantations Ltd v D'Cruz [1967] 1 MLJ 83 (refd)

Bank Negara Malaysia v Mohd Ismail & Ors [1992] 1 MLJ 400 (refd)
Board of Governors of Sekolah Menengah St Gabriel v Ranjit Singh [1970] 1 MLJ 38 (refd)
Commissioners of the Municipality of Malacca v Sinniah [1974] 1 MLJ 77 (refd)
Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212 (refd)
GHS Fripp v AP Nicholas [1935] MLJ 14 (refd)
Holee Holdings (M) Sdn Bhd v Chai Him & Ors [1997] 4 MLJ 601 (refd)
Inwards & Ors v Baker [1965] 1 All ER 446 (refd)
Mok Deng Chee v Yap See Hoi & Ors [1981] 2 MLJ 321 (refd)
Teh Poh Wah v Seremban Securities Sdn Bhd [1996] 1 MLJ 701 (refd)

Leong Wai Hong (*Skrine & Co*) for the plaintif
Vengetraman Manickam (*Jeyaratnam & Chong*) for the defendant.

Abdull Hamid Embong J: All the seven defendants were former employees of the plaintiff who were provided residential quarters whilst in the employment of the plaintiff. The defendants are no longer employed by the plaintiff and were given notice to vacate their quarters. The defendants refused. By encl. 5 the plaintiff applied for summary judgment for ejectment and vacant possession of the quarters and this court allowed that application. An oral application by the defendants to stay the execution of that judgment pending appeal was also dismissed. The defendants now appeal.

The first to fifth defendants voluntarily stopped work with the plaintiff when the operation of the plaintiff's estate switched from rubber to oil palm. Their last day at work was 31 December 1999. Notices to surrender their quarters were given on 27 October 2001 and 29 January 2002. The sixth defendant stopped work without notice to the plaintiff on 31 May 1997 and he was given various notices to vacate his quarters dated 6 October 2001, 27 October 2001 and 29 January 2002. The seventh defendant had retired with full benefits as an employee of the plaintiff in the 1980s. He was given a notice to vacate his quarters on 29 January 2002. On 5 April 2002 the plaintiff's solicitor gave all the defendants a further notice to vacate their quarters within 14 days. The defendants had ignored all these notices and continued to occupy the plaintiff's quarters up to the date of hearing of this application.

In reply the defendants averred that there were promises made by certain officers of the plaintiff at some time when the defendants were still employed by the plaintiff, that the plaintiff was gathering information from its employees on a plan to implement a housing project for the employees. They alleged that the plaintiff had created a legitimate expectation for alternative housing. The defendants stated that in Kedah, the plaintiff's principal company, Syarikat Guthrie had indeed implemented such a project for its employees. So is the case with a few other estates in the Sungai Siput area. The defendants did not deny that the plaintiff had offered them

new jobs in the oil palm estate. The first to the fifth defendants deposed that they were discriminated by the plaintiff and that their job terminations were not legal. The defendants further stated that the reason given by the plaintiff that it wanted back the quarters to house other employees was frivolous since there were other empty quarters that could be utilized to house the new employees. The defendants also averred that they have a good defence and that they have filed an application for extension of time to file their defence.

Learned counsel for the plaintiff submitted that as employees the defendants only had a contractual right with the plaintiff to remain in the quarters for as long as they are employed by the plaintiff. They have no right in law to reside in those quarters forever. I fully agree with this submission.

In an application for summary judgment it is trite law that the court at this stage should only determine whether the defence had raised a bona fide issue for trial. The court need not be concerned with the merits of the defence or the likelihood of its success. The defence should not be deprived of its chance to adduce evidence at a trial if the court determines that a full trial is necessary (see *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400). Learned counsel for the defence submitted that the issue that needed further deliberation was the promise made by the plaintiff that the defendants would be given alternative housing elsewhere. It was also submitted that the defendants were not squatters but tenants holding over and as such had a right to stay on in the quarters. This argument was however not accepted by this court. Having scrutinized the affidavit in reply by the defence, I find that there had not been raised any bona fide issue to be tried. The defendants had merely adverted to an alleged promise by the plaintiff's officer some time in the past. That promise was actually not a promise to provide for alternative housing but merely to seek the view of the employees on a plan to implement a housing project. That such a discussion even took place was denied by the plaintiff. The defendants too could not adduce any evidence that it ever took place but to merely allege it. Bare allegations however can never be evidence, and in a trial by affidavits if it is trite that such allegation must condescend on some particulars. In any event, that promise even if it existed, in my view is insufficient to raise a bona fide issue for trial.

The plaintiff here is merely trying to secure possession of its property ie the quarters. These were houses provided by the plaintiff for the benefit of its existing employees and as part of the employment scheme and benefit. Workers in an estate come and go. The new employees will need to be housed in the quarters, previously resided by former employees such as the defendants here. It would certainly be a hardship and indeed an injustice to the plaintiff if this court were to accede to the defendants' claim that they are entitled to stay on in the quarters in view of that purported promise given to them. If at all it existed, that so-called promise remained what it was — a mere promise. It could not be a legal basis for the defendants to claim that they thus have a legitimate expectation to remain in the plaintiff's quarters at will and indefinitely. The defendants have no such right in law. They are not, as submitted by learned counsel tenants holding over. They

were provided the quarters as part of their scheme of employment which have now ended. At the highest they are in my view merely tenants at will. See *GHS Fripp v AP Nicholas* [1935] MLJ 14 where it was held that an employee occupying his employer's premises during his employment for the better performance of his duties is a tenant at will. As such the plaintiff as the legal owner of the quarters may exercise its will to recover their properties once that employment terminated.

In *Anglo-Oriental Plantations Ltd v D'Cruz* [1967] 1 MLJ 83, a case where the defendant refused to vacate the premises belonging to the plaintiff-employer after his employment was terminated, it was held as follows:

(1) where a person occupied premises as a servant of the owner for the more effective performance of his duties as such servant and he is dismissed, he has no right to continue to occupy the premises;

(2) even if it is decided that his dismissal was wrongful, this being a contract for personal services, the court would not enforce specific performance of the contract to employ him and the defendant would only be entitled to damages, including compensation for loss of the use of the bungalow.

In another case, *Board of Governors of Sekolah Menengah St Gabriel v Ranjit Singh* [1970] 1 MLJ 38, where the plaintiff applied for ejectment against the defendant, its former watchman whose services had been terminated, Raja Azlan Shah J (as His Royal Highness was then) said this at p 39:

> It is clear that the respondent was a service occupant under a licence because he was required by the nature of his work to live there for the effective performance of his duties (see *Ramsbottom v Snelson* [1948] 1 KB 473) and as such he has no right to remain on the premises once his contract of service is terminated (see *Thomson's (Funeral Furnishers) Ltd v Philips* [1945] 2 All ER 49; *Kamuning (Perak) Rubber & Tin Co Ltd v Abraham* [1965] 1 MLJ 20; *Anglo-Oriental Plantations Ltd v D'Cruz* [1976] 1 MLJ 83). Therefore in my opinion the issue between the parties before the sessions court is whether by the terms of his contract of service there is created a tenancy or a licence. That is what the sessions court is being asked to decide. The respondent has admitted that he is a service occupant in his pleadings and on the face of it he has no valid defence.

And, in *Commissioners of the Municipality of Malacca v Sinniah* [1974] 1 MLJ 77, a case where the plaintiff sought from the defendant, a previous employee, to vacate the quarters allotted to him by reason of his employment, Sharma J held that:

(3) the defendant was a licensee and could not resist the plaintiff's claim on the ground that he had a right under the contract of service to remain in the quarters;

The learned defence counsel spoke of legitimate expectation but it is not clear to this court whether what is meant is that an equity has arisen in favour of the defendants in view of the purported promise made by the

plaintiff and because of that, the principle of equitable estoppel is applicable against the plaintiff from ejecting the defendants out of the quarters. (See *Inwards & Ors v Baker* [1965] 1 All ER 446, and *Mok Deng Chee v Yap See Hoi & Ors* [1981] 2 MLJ 321). But for this principle to apply, there must firstly be a landlord and tenant relationship between the parties, which as stated earlier there is none and secondly the defendants would have expended monies on the quarters as a result of that promise or inducement. There was also no evidence to that effect. In order to establish equitable estoppel the defendants need to show that the three elements of assurance, reliance and detriment were present, and this they had failed to do. (See *Holee Holdings (M) Sdn Bhd v Chai Him & Ors* [1997] 4 MLJ 601). Having given it serious consideration I am of the view that this ground does not raise a bona fide issue to be tried. In *Bank Negara v Mohd Ismail*, the Federal Court held that the court must be satisfied that the defence has not merely raised an issue, but an issue which is triable.

Similarly, having combed through the affidavit evidence I could find no basis for the bare allegation that the defendants were discriminated against in the offers for the alternative employment. In fact from contemporary documents filed by the plaintiff this court is satisfied that the defendants were offered new employment which they voluntarily declined. In an application for summary judgment, the court is not bound to accept, uncritically every statement and allegation made in an affidavit if they are found to be improbable or inconsistent with contemporary documents. This court has a discretion to determine whether such statements have prima facie plausibility to merit further investigation (see *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212).

In the instant case, my finding is that the defendants have not raised any bona fide defence as showing cause to this application. In a plain and obvious case such as this, the court is entitled to exercise its discretion not to grant leave to defend and enter summary judgment (see *Teh Poh Wah v Seremban Securities Sdn Bhd* [1996] 1 MLJ 701).

For these reasons, the plaintiff's application at encl 5 is allowed with costs.

Plaintiff's application allowed wih costs and defendants' oral application to stay execution of judgment pending appeal dismissed.

Reported by Andrew Christopher Simon